

Topic 2 - Introduction to the Law of Contract; Offer and Acceptance

Chapter 2, Chapter 3

Contract Law

An agreement between two or more parties under which legal rights and obligations are created which will be enforced in courts; a contract is legally binding - if it is not followed there are consequences

Essential Elements of a Contract

- a) Offer by one party and its acceptance by the other
- b) Intention of the parties to create legal relations
- c) Valuable consideration or deed (you buy the promisor's promise)
- d) Legal capacity of parties to act
- e) A genuine consent by parties
- f) Legality of the objects and agreement

Classification of Contracts

Formal Contract - written, signed, witnessed, sealed and delivered

Simple Contract - Expressed (written or oral; e.g. car hire) & Implied (taxi usage)

Valid Contract - all essential elements are present; it is enforceable against both parties

Voidable Contract - party may avoid contract if he/she wishes

Void Contract - under law, contract never existed; e.g. illegal contract to commit a crime

Unenforceable Contract - prima facie valid but with a technical defect for example if the contract is made verbally but required by the statute to be in writing

Offer and Acceptance

A binding agreement requires three elements:

1. Two or more parties
2. An offer - proposal by one party to enter into a legally binding contract with another
3. An acceptance of that offer

The Offer

- An offer is a proposal by one party to enter into a legally binding contract with another
- The offer may be made in writing, orally or implied by conduct
- An offer must be communicated or there can be no acceptance and therefore no contract
- The offer must be brought to the notice of the person to whom it is made
- An offer can be made to a specific person or persons, to a particular class of persons or to the world at large. It may only be accepted by the person or persons whom it was intended.
- A promise to keep an offer open for a period of time is not enforceable UNLESS the offer provides consideration.

Offers distinguished from invitations to treat or statements supplying information:

Invitation to treat - is an indication of willingness to deal or trade, an initial approach to other inviting them to make an offer which may or may not be accepted

Statements supplying information - a statement that provides information but does so without indicating that the person intended to make an offer is not an offer

Shop displays, catalogues and advertisements

The display of an article in a shop window or on a shelf in a shop, even with a price tag, is not generally an offer but merely an invitation for someone to make an offer of purchase. Catalogues, price lists and advertisements are usually invitations to treat and not firm offers by the seller.

Auction Sales

The auctioneer's call for bids is only an invitation to treat. Where a bid is made, such constitutes an offer from the bidder to buy at that price. The auctioneer may then either accept or reject the bid on behalf of the principal.

Online Auctions

Placing an item for sale on eBay did not constitute merely an invitation to treat, but was rather an offer to sell the item.

Smythe Thomas [2007]

Tenders

A statement that goods are to be sold by tender is usually regarded as an invitation to treat. The offer is normally made by those submitting tenders and there is no contract until the person who called for tenders accepts one of them

Revocation of Offer

Offer is revoked when the offerer formally withdraws the offer

Offerer can give notice of revocation at any time before acceptance

On revocation the offer comes to an end and cannot be accepted

Byrne & Co v Leon Van Tienhoven & Co (1880)

This general rule does not work so well in relation to unilateral contracts

Lapse of Offer

An offer will lapse if

- not accepted within the time stated
- not accepted within a reasonable time, where no time for acceptance has been stated
- a counter offer is made
- there is a death of either party before acceptance
- Loss of contractual capacity

Counter Offer

Material terms of the offer such as price, quantity and quality are changed

Note - a request for information is not a counter offer.

Acceptance

An acceptance occurs when the party to whom an offer is made agrees to the proposal of the offeror

Rules as to Acceptance

1. Acceptance must be communicated to the offerer via word of mouth, writing or by conduct
 - Exceptions – where offerer has dispensed with notification of acceptance, where acceptance is to take the form of performance of an act, where the postal acceptance rule applies
2. Acceptance can be implied from the conduct of parties
3. Acceptance cannot be inferred from the silence or inaction of the offeree
4. There can be no acceptance if the offeree is unaware of the offer
5. In a unilateral contract, the offerer has waived its right to communication of acceptance
6. Acceptance must be unconditional
7. Acceptance must follow the conditions, if any, stated in the offer
8. Acceptance can be made only by the party to whom the offer was made
9. Acceptance can be revoked at any time prior to acceptance being communicated
10. Acceptance must be made within the time prescribed or, if no time has been prescribed, within reasonable time
11. Communication of acceptance must be made in a regular and authorised manner
12. The postal acceptance rule

A calls B for a car offer of \$20 000 on 1 Jan 2015. B posts letter of acceptance on the 15 Jan 2015. A receives the letter on the 30 Jan 2015. Meanwhile X sees offer on the 16 Jan 2015 and accepts it on the 17 Jan 2015.

A sells car to X leaving B furious.

The issue in the question is the date of acceptance.

B accepted the offer before X however A doesn't know when B posted the letter. Therefore the date of acceptance is the 17 Jan 2015.